

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

VALMET, INC.

and

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED AND INDUSTRIAL SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO

CASES: 15-CA-206655
15-RC-204708

**RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW
JUDGE'S DECISION AND ORDER**

FISHER & PHILLIPS LLP
JOSHUA H. VIAU
DOUGLAS R. SULLENBERGER
1075 Peachtree Street, NE
Suite 3500
Atlanta, GA 30309
Tel: 404-231-1400
Fax: 404-240-4249
jviau@fisherphillips.com

COUNSEL FOR RESPONDENT
VALMET, INC.

May 22, 2018

BACKGROUND

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent Valmet ("Respondent" or "Valmet"), by and through the undersigned counsel, hereby files these exceptions to Administrative Law Judge Arthur J. Amchan's April 17, 2018 Decision and Order. The specific grounds for these exceptions and citations of authority are set forth in Valmet's supporting brief, which is filed concurrently herewith. With these exceptions, Valmet hereby requests oral argument before the Board.

EXCEPTIONS TO DECISION

I. To the judge's finding that Brian Hammerbacher "went on to elaborate that this meant that everything, including compensation would be 'frozen' because everything would be subject to negotiation" and that this meant "there would be no wage increases and no merit wage increases." (ALJD, p. 5, LL 23-26.)

II. To the judge's finding that Hammerbacher's reference to the severance plan as the "non-union" plan "implied that if the employees selected the Union they would necessarily lose some or all of the benefits of this plan" and that these statements "were misleading and coercive." (ALJD, p. 5, LL 33-35.)

III. To the judge's finding that Valmet violated Section 8(a)(1) by Hammerbacher's suggestion that "employees would necessarily lose the benefits of the company severance plan if they chose union representation" and failing to assure employees that they would continue to receive the severance benefits during contract negotiations. (ALJD, p. 5, LL 38-41.)

IV. To the judge's finding that Hammerbacher's remarks five minutes after he discussed the severance plan are not specific, and would not have clarified his earlier statement (ALJD, p. 5, fn. 5.)

V. To the judge's finding that "Kohl and Hammerbacher's remarks together could only leave employees with the impression that selecting union representation would necessarily mean they would not get severance benefits in the event of a layoff." (ALJD, p. 6, LL 5-7.)

VI. To the judge's finding that Kohl conceded that the reason the Neenah plan was so limited is that the parties probably did not negotiate broader coverage and that this is a far cry from the impression left with employees that there will be no severance for employees who are laid off if you select the union. (ALJD, p. 6, LL 7-10.)

VII. To the judge's finding that Hammerbacher's remarks about the company's severance plan could lead employees to reasonably infer that they will lose an existing benefit if they select union representation. (ALJD, p. 6, LL 14-18.)

VIII. To the judge's finding that Sheaffer spoke from prepared remarks at all six (6) meetings. (ALJD, p. 6, L 26.)

IX. To the judge's finding that Sheaffer's talks with the exception of his remarks in response to questions "were essentially the same at all six meetings as those recorded by Travis Leonard." (ALJD, p. 6, LL 27-28.)

X. To the judge's finding that "the general tenor of the [sic] Sheaffer's prepared remarks was that unit employees were unlikely to benefit from selecting union representation." (ALJD, p. 6, LL 32-33.)

XI. To the judge's finding that Sheaffer told employees that "Respondent could not give any wage increases." (ALJD, p. 6, LL 34-35.)

XII. To the judge's finding that Sheaffer responded to the question of whether progressive step increases would be "frozen" that once employees selected the union and the union was certified Respondent could not give any wage increases. (ALJD, p. 6, LL 38-40.)

XIII. To the judge's finding that Cliett's telling Nail and Lawrence that the progression wages would be "stuck in the status quo," led Nail to believe that he might not get the progression wage increase that he was due in about a week if the employees voted for union representation. (ALJD, p. 7, LL 25-28.)

XIV. To the judge's finding that "at a minimum, [Cliett] created uncertainty in the minds of Lawrence and Nail as to whether they would receive the progressive wage increases that they were otherwise expecting." (ALJD, p. 7, LL 35-36.)

XV. To the judge's finding that Wallace's "explanation as to why she came to talk to Bush and Frierson is nonsensical." (ALJD, p. 8, fn. 8.)

XVI. To the judge's finding that Wallace had more motivation to deny the comments attributed to her by Bush and Frierson than they had to fabricate their testimony. (ALJD, p. 8, fn. 8.)

XVII. To the judge's finding that on September 14 about an hour or less before the representation election began, Richardson stopped at Leonard's workstation. (ALJ, p. 9, LL 11-12.)

XVIII. To the judge's finding that Ken Hopper in a November 8, 2017 affidavit "remembered that Leonard had told him on September 14 that Richardson said he hired Leonard and could fire Leonard." (ALJD, p. 9, LL 20-23.)

XIX. To the judge's finding that Richardson told Leonard, I hired you and I can fire you and that given the timing of the conversation Richardson said that to intimidate Leonard just before he went to vote in the election. (ALJD, p. 9, LL 23-24.)

XX. To the judge's finding that several employees questioned Leonard about his conversation with Richardson before he went to cast his ballot in the representation election and

that many employees were aware of the conversation between Leonard and Richardson before the September 15 voting. (ALJD, p. 9, LL 28-32.)

XXI. To the judge's finding that Richardson testified that Hammerbacher had mentioned his discussion with Leonard the morning before the representation election began. (ALJD, p. 10, LL 5-7.)

XXII. To the judge's finding that "Leonard told Hopper that Richardson threatened his job immediately after Richard Richardson did so." (ALJD, p. 10, LL 15-16.)

XXIII. To the judge's finding that Valmet randomly selected two (2) winning tickets as part of its quiz contest. (ALJD, p. 11, L 4.)

XXIV. To the judge's finding that "the contest assisted Respondent in identifying which employees might or might not be sympathetic with the organizing drive." (ALJD, p. 11, LL 9-11.)

XXV. To the judge's finding that Valmet's raffle/contest violated the Act. (ALJD, p. 11, LL 13-14.)

XXVI. To the judge's finding that progressive wage increases were part of the "status quo" which Respondent was required to continue if employees selected union representation. (ALJD, p. 11, LL 16-17.)

XXVII. To the judge's finding that Valmet's obligation in maintaining the status quo during negotiations, if employees selected the union, included continuing granting these progressive increases as it had in the past. (ALJD, p. 11, LL 29-30.)

XXVIII. To the judge's finding that Valmet by Hammerbacher, Sheaffer, and Cliett violated Section 8(a)(1) and engaged in objectionable conduct by telling employees that wage increases that were established past practices would be frozen if they selected union representation,

and or indicating the employees would not receive such wage increases if they selected union representation. (ALJD, p. 11, LL 32-36.)

XXIX. To the judge's finding that the grading of the quiz contest could be a statutory violation because it would indicate to Valmet how employees voted in the representation election. (ALJD, p. 11, fn. 14.)

XXX. To the judge's finding that the impact of Sheaffer's remarks was exacerbated by his emphasis on how long negotiations might take and that this reasonably would suggest to employees that if they selected union representation they would not receive their progressive wage increases for an extended period. (ALJD, p. 12, LL 4-6.)

XXXI. To the judge's finding that Valmet bears full responsibility for Sheaffer's uncertainty regarding the status of step progression wages during negotiations and after negotiations end. (ALJD, p. 12, LL 13-17.)

XXXII. To the judge's finding that Valmet, through Hammerbacher, violated the Act and engaged in objectionable conduct by suggesting that if employee selected union representation they would lose the benefits of Valmet's severance plan. (ALJD, p. 12, LL 19-21.)

XXXIII. To the judge's finding that Hammerbacher suggested that employees would necessarily lose the benefits of the company severance plan if they chose union representation and that in failing to assure employees that they would continue to receive these benefits during contract negotiations Valmet violated section 8(a)(1). (ALJD, p. 12, LL 23-26.)

XXXIV. To the judge's finding that Tiffany Wallace was an agent of Valmet. (ALJD, p. 12, L 11.)

XXXV. To the judge's finding that employees Bush and Frierson would have reasonably believed that Wallace was speaking for management when she told them that lead man positions would be eliminated or reduced in bargaining. (ALJD, p. 13, LL 32-34.)

XXXVI. To the judge's finding that Valmet, by Tiffany Wallace, engaged in objectionable conduct and violated Section 8(a)(1). (ALJD, p. 14, LL 1-2.)

XXXVII. To the judge's finding that Wallace was not telling employees that the status of lead man was a subject of bargaining, but rather that those who voted for union representation would lose that status or be foreclosed from becoming lead men in the future, and that this is an obviously coercive statement before an election and that it either implicitly threatened incumbent lead men of a 10% loss in wages or threatened aspiring lead man that selecting union representation would foreclose their opportunity to increase their wages by becoming a lead man. (ALJD, p. 14, LL 7-10.)

XXXVIII. To the judge's finding that Valmet, by Larry Richardson, engaged in objectionable conduct and violated section 8(a)(1). (ALJD, p. 14, LL 12-13.)

XXXIX. To the judge's finding that Larry Richardson either explicitly threatened Justin Leonard with loss of his job or implicitly threatened him with unspecified reprisals, and that Leonard was very likely to draw the connection between the this threat and his comments at the captive audience meeting and the representation election. (ALJD, p. 14, LL 15-18.)

XL. To the judge's finding that the timing of Richardson's conversation, just before Leonard was about to vote, was likely to coerce and interfere with Leonard's rights to exercise his right to vote freely. (ALJD, p. 14, LL 21-24.)

CONCLUSIONS OF LAW

XLII. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period between the filing of the representation petition by environmental health and safety manager, Tiffany Wallace, threatening employees with job loss or loss of promotion opportunities (to lead man) if they selected union representation on or about September 13, 2017. (ALJD, p. 14, LL 34-36.)

XLIII. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by Hammerbacher on September 7, 2017, telling employees that during collective bargaining negotiations they would not receive progressive step wage increases, which were an established past practice of Valmet, if they selected union representation. (ALJD, p. 14, LL 38-41.)

XLIV. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by Hammerbacher suggesting that unit employees would necessarily lose the benefits of Respondent's severance plan if they selected union representation. (ALJD, p. 14, LL 43-45.)

XLV. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by Cliett telling or suggesting to employees that they would not receive progressive step wage increases during collective bargaining negotiations if they selected union representation. (ALJD, p. 15, LL 1-3.)

XLVI. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by Sheaffer on September 13, 2017, telling employees that they would not receive progressive step wage increases during collective bargaining negotiations if they selected union representation. (ALJD, p. 15, LL 5-8.)

XLVI. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by Richardson threatening employees with termination and or and/or unspecified reprisals because of protected activities related to the representation election. (ALJD, p. 15, LL 9-10.)

XLVII. To the judge's conclusion that Valmet violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period by conducting a raffle/contest during the critical period in a manner which would aid it in identifying which employees were and which employees were not sympathetic to the union. (ALJD, p. 15, LL 12-14.)

Recommendations Regarding Objections

XLVIII. To the judge's recommendation that the election be set aside and remanded to the Regional Director for the purpose of conducting a second election. (ALJD, p. 15, LL 35-36.)

Remedy

XLIX. To the judge's proposed remedy that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. (ALJD, p. 16, LL 4-6.)

EXCEPTIONS TO ORDER

L. To the judge's proposed order that Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall cease and desist from threatening employees with job loss or loss of promotion opportunities if they select union representation. (ALJD, p. 16, LL 15-18.)

LI. To the judge's proposed order that Respondent, Valmet Inc., Columbus, Mississippi, its officers, agents, successors, and assigns, shall cease and desist from telling or suggesting to employees that during collective bargaining negotiations they will not receive

benefits, such as progressive wage increases, that are an established past practice of Respondent, if they select union representation. (ALJD, p. 16, LL 12-15.)

LII. To the judge's proposed order that Respondent, Valmet Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall cease and desist from threatening employees with termination and or and/or unspecified reprisals because of protected activities related to the representation election. (ALJD, p. 16, LL 12-15, 24-25.)

LIII. To the judge's proposed order that Respondent, Valmet Inc., Columbus, Mississippi, its officers, agents, successors, and assigns, shall cease and desist from suggesting to employees that they would lose the benefits of Respondent's severance plan if they select union representation. (ALJD, p. 16, LL 12-15, 27-28.)

LIV. To the judge's proposed order that Respondent, Valmet Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall cease and desist from conducting a raffle/quiz during the critical period between the filing of a representation petition and a representation election in a manner that would assist in determining which employees favored and which employees opposed unionization. (ALJD, p. 16, LL 12-15, 30-33.)

LV. To the judge's proposed order that Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall cease and desist from in any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. (ALJD, p. 16, LL 12-15, 34-35.)

LVI. To the judge's proposed order that Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall physically post at its Columbus, Mississippi facility and electronically distribute via email, Internet, or other electronic means to its unit employees the Appendix to the ALJD. (ALJD, p. 16, LL 12-15, 39-40 and p. 17, LL 1-11.)

LVII. To the judge's proposed order that Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns shall file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply. (ALJD, p. 17, LL 13-15.)

CONCLUSION

Based on the foregoing Exceptions, as supported by Valmet's brief, Valmet respectfully request that the board reject the judge's findings of fact, conclusions of law, and proposed order as excepted to above and dismiss the Complaint in its entirety.

Respectfully submitted,

By: s/Joshua H. Viau
FISHER & PHILLIPS LLP
JOSHUA H. VIAU
DOUGLAS R. SULLENBERGER
1075 Peachtree Street, NE
Suite 3500
Atlanta, GA 30309
Tel: 404-231-1400
Fax: 404-240-4249
jviau@fisherphillips.com

Attorneys for Respondent

Dated this 22nd day of May, 2018.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

VALMET, INC.

and

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED AND INDUSTRIAL SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO

CASES: 15-CA-206655
15-RC-204708

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2016, I e-filed the foregoing **RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER** with the office of the NLRB's Executive Secretary using the Board's e-filing system and that it was served on the following individuals via email and/or Federal Express:

Andrew Miragliotta
Counsel for the General Counsel
National Labor Relations Board, Region 15
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413
andrew.miragliotta@nlrb.gov

Brad Manzolillo
USW Organizing Counsel
60 Boulevard of the Allies
Five Gateway Center Room 913
Pittsburgh, PA 15222
bmanzolillo@usw.org

s/Joshua H. Viau

Joshua H. Viau